IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/11/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.1503 OF 2000

Varnica Herbs,
rep. by Power of Attorney
V. Viswanathan .. Petitioner

-Vs-

1. Central Board of Excise and Customs,
Ministry of Finance,
Department of Revenue,
Government of India,
New Delhi -1.

2. The Commissioner of Central Excise,
Trichirappalli.

3. The Assistant Commissioner of
Central Excise,
Pondicherry. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of declaration as stated therein.

For Petitioner : Mr.Arvind P. Datar
Senior Counsel for
Mr.C. Saravanan &
Ms. Chitra Narayan

For Respondents : Mr.K. Veeraraghavan, ACGSC

:J U D G M E N T

The petitioner has prayed for declaration that Circular No.492/58.9 9-CX (F.No.341/52/99-TRU) dated 2.11.99 issued by the respondent No.1 , Central Board of Excise and Customs as null and void and contrary to the provisions contained in Articles 14, 19(1)(g) and 265 of the Constitution of India and contrary to Section 38B of the Central Excise Act, 1944, Section 83(r) of Standards of Weights and Measures Act, 1 976, Rules 17 and 34(1)(b)

of the Standards of Weights and Measurements (Packaged Commodities) Rules, 1977.

2. Petitioner firm is engaged in the manufacture of herbal hair dye which falls under Chapter sub-heading 3305.99 of Central Excise Tariff Act, 1985. Under Notification No.20/99 CE (NT) dated 28.2.1999, herbal hair dye manufactured by the petitioner are packed in sachets of 8 gms in weight in Photo Protective Pouch and six such pouches were being packed in a Mono Carton. Since the net weight of the individual pouch did not exceed 10 gms, the petitioner was assessed on the basis of wholesale price under Section 4(1)(a) of the Central Excise Act, 1944. The Central Government introduced Section 4A of the Act with effect from 14.5.1997 as per Section 82 of the Finance Act, 1997, which contains a special provision for the valuation of excisable goods with reference to retail sale price, if the following two conditions are satisfied, namely (1) there is a notification specifying the goods assessed with reference to retail sale price and (2) the manufacture is required under the provisions of Standards of Weights and Measures Act or the Rules made thereunder to declare retail price of such goods on the package thereof.

3. While the matter stood thus, the first respondent has issued the impugned circular. According to the petitioner, such circular cannot be issued in the purported exercised jurisdiction under Section 37 B of the Central Excise Act, 1944 as such a question is covered under Section 82(r) of the Standards of Weights and Measures Act (hereinafter referred to as the Act). It is further contended that since exemption is contemplated under Rule 34 of the Standards of Weights and Measures (Packaged Commodities) Rules (hereinafter referred to as the Rules), the impugned circular is without jurisdiction as it takes away the effect of Rule 34.

4. The aforesaid contentions raised by the petitioner have been refuted by the respondents in their counter.

5. The relevant portion of the impugned circular is to the following effect:-

 . . . 5. In view of the above statutory requirement for declaration of retail sale price under the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 for multi-piece packages, it is clarified that in respect of multi-piece packages of a commodity intended for retail sale and which are notified under section 4A, they shall be assessed to excise duty under the provisions of section 4A of Central Excise Act, 1944. . . .

6. It is appropriate at this stage to notice the relevant statutory provisions.

7. Section 4A of the Central Excise Act is to the following effect :-

 SECTION 4A. Valuation of excisable goods with reference to retail sale price. - (1) The Central Government may, by notification in the Official

Gazette, specify any goods, in relation to which it is required, under the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of subsection (2) shall apply.

(2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central government may allow by notification in the Official Gazette.

(3) The Central Government may, for the purpose of allowing any abatement under sub-section (2), take into account the amount of duty of excise, sales tax and other taxes, if any, playable on such goods.

Explanation 1 – For the purposes of this section, "retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes local or otherwise, freight, transport, charges, commission payable to dealers, and all charges towards advertisement, delivery packing, forwarding and the like, as the case may be, and the price is the sole consideration for such sale.

Explanation 2. - Where on any excisable goods more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price for the purposes of this section.

8. Section 83 of the Standards of Weights and Measures Act, 1976 contain the rule making power of the Central Government empowering the Central Government to make rules to carry out the provisions of the Act. Section 83(2) empowers the Central Government, without prejudice to the generality of the rule making power under Section 83(1), to make rules to provide for the manner of declaration of the contents of a package and specification of the unit of weight, measure or number in accordance with which the retail sale price shall be declared on the package. In accordance with the rule making power, the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 have been framed. Rule 2(p) is to the following effect :-
"retail package" means a package containing any commodity which is produced, distributed, displayed, delivered or stored for sale through retail sales agencies or other instrumentalities for consumption by an individual or a group of individuals."

9. Rule 17 is to the following effect :-
" 17. Additional declarations to be made on multi-piece packages. -
(1) Every multi-piece package shall bear thereon, in addition to the declaration required to be made under any other provision of these rules, a declaration of -

(a) the number of individual pieces contained thereto;

(b) the retail sale price of the multi-piece package;

Provided that where individual pieces contained in a multi-piece package are packaged or labelled separately and are capable of being sold separately, each piece shall bear thereon a declaration as to the quantity and the retail sale price thereof.

(2) When a multi-piece package contains a number of smaller multipiece packages each of which is capable of being sold separately, such multi-piece package shall also bear thereon a declaration as to the number of smaller packagers contained therein and the quantity contained in each such smaller package.

10. Chapter V of the Rules relate to exemptions. Rule 34 provides for exemption in respect of certain packages. The relevant provision contained in Section 34 is to the following effect :-

34. Exemption in respect of certain packages. - (1)Nothing contained in these rules shall apply to any package containing a commodity if -
(a) . . .
(b) the net weight or measure of the commodity is ten grams or ten millilitres or less, if sold by weight or measure;

11. The first and foremost contention of the petitioner is to the effect that since Rules have been framed under the Standards of Weights and Measures Act relating to packaged commodities, the Central Board of Excise and Customs lacks jurisdiction to issue any circular or notification in respect of matters covered under the Act or the Rules made thereunder.

12. Even though such a contention may appear to be attractive on the face of it, on deeper scrutiny, such contention is not acceptable. The purport of the present circular is not to lay down any guideline or rule relating to any matter covered under the Act or the Rules made thereunder. The purport of the impugned circular is to issue clarification in the matter relating to manner of levying excise in respect of articles. The purpose is to bring unity in the classification of excisable goods or with respect to levy of excise on those goods and not to issue any general direction or rule in respect of the matters covered under the Act or the Rules made thereunder.

13. The next contention of the learned counsel for the petitioner is that the effect of the circular is to whittle down the exemption contemplated under Rule 34(1)(b)of the Rules. Relying upon the said rule, it is the contention of the petitioner that since the weight of the individual package is 8 grams, which is less than 10 grams, the petitioner is not expected to declare MRP or the net weight of the individual package. It is

also the contention of the petitioner that merely because sachets are placed in a mono-carton that would not make the pack a multi-piece package and Rule 17 is not applicable.

14. Rule 6 of the the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 contained in Chapter II requires every retail package to contain the net quantity, and the maximum retail price. Multi-piece package has been defined under Rule 2(j) of the Rules, which is as follows :-

"Multi piece" package containing 2 or more individually packaged or labelled pieces of the same commodities of identical quantities intended for retail sale, either in individual pieces or the package as a whole.

Rule 17 itself requires that every multi piece package shall contain a declaration of number of individual pieces contained and the retail sale price of the multi piece package. The proviso makes it clear that where individual pieces contained in multi package or packaged are labelled separately and are capable of being sold separately, each piece shall bear declaration as to quantity and the retail sale price.

15. A perusal of these provisions makes it clear that articles kept in separate pouches by the petitioner can be termed as multi piece package and such pouches can be sold individually in single piece or together in a mono-carton of six pouches. The contention of the petitioner that exemption under Rule 34 would be applicable is not acceptable. Even though the net weight is less than 10 grams, it is evident that article is not intended to be sold either by weight or by measure as contemplated under Rule 34(b). The contention that clarification issued by the respondent No.1 has the effect of whittling down the exemption granted under Section 34 is not at all acceptable.

16. For the aforesaid reasons, I do not find any merit in this writ petition, which is accordingly dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes
Internet : Yes

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To

1. Central Board of Excise and Customs,
Ministry of Finance,
Department of Revenue,Government of India,
New Delhi -1.

2. The Commissioner of Central Excise,
Trichirappalli.

3. The Assistant Commissioner of
Central Excise, Pondicherry.